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Attorneys for Plaintiff JOHN KERR

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

KEVIN MARTIN, DAVID NORRIS, FRANK
 STONE, individually and on behalf of all other
 similarly situated,

Plaintiffs,

v.

MERRILL LYNCH, PIERCE, FENNER &
 SMITH, INCORPORATED, MERRILL LYNCH
 & CO., INC., and DOES 1-20, inclusive,

Defendants.

Case No. 10-CV-04020 CW

**STIPULATION AND ORDER
 PERMITTING FILING OF
 CONSOLIDATED FIRST AMENDED
 COMPLAINT**

JOHN KERR, individually and on behalf of all
 other similarly situated,

Plaintiff,

v.

MERRILL LYNCH & CO., INC., MERRILL
 LYNCH, PIERCE, FENNER & SMITH,
 INCORPORATED, and DOES 1-20, inclusive,

Defendants.

Case No. 11-CV-01654 CW

Judge: Hon. Claudia Wilken
 Courtroom: 2

Martin Complaint Filed: August 6, 2010
Kerr Complaint Filed: January 18, 2011

Plaintiffs KEVIN MARTIN, DAVID NORRIS, and FRANK STONE in case no. 10-CV-04020 CW, plaintiff JOHN KERR in case no. 11-CV-01654 CW and defendants MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED and MERRILL LYNCH & CO., INC. in both cases, by and through their respective counsel, stipulate that plaintiffs may file in each of the two cases that consolidated first amended complaint attached hereto as Exhibit A. By stipulating to the filing of the consolidated first amended complaint, the Merrill Lynch Defendants in no way admit any of the allegations it contains. Defendants' date to respond to the filed consolidated first amended complaint is deferred until thirty (30) days following this Court's Order, if any, denying Final Approval of the parties' pending settlement noted on the record at Dkt. #57 in case no. 10-CV-04020 CW and Dkt. #15 in case no. 11-CV-01654 CW.

DATED: July 21, 2011

BARTKO, ZANKEL, TARRANT & MILLER
A Professional Corporation

/S/

By Robert H. Bunzel
Attorneys for Plaintiffs
KEVIN MARTIN, DAVID NORRIS
and FRANK STONE

DATED: July 21, 2011

DOSTART CLAPP & COVENEY, LLP

/S/

By James F. Clapp
Attorneys for Plaintiff
JOHN KERR

1 DATED: July 21, 2011

MUNGER TOLLES & OLSON, LLP

2 /S/

3 By

Victoria L. Boesch

Attorneys for Defendants

4 MERRILL LYNCH, PIERCE, FENNER & SMITH,

5 INCORPORATED and

6 MERRILL LYNCH & CO., INC.

7 IT IS SO ORDERED.

8 DATED: 7/28/2011

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UNITED STATES DISTRICT COURT JUDGE